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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Equal Access and)
Interconnection Obligations)
Pertaining to Commercial)
Mobile Radio Services)

CC Docket No. 94-54
RM-8012

To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Respectfully submitted,

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September 12, 1994

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Summary

Paging Network, Inc. ("PageNet") hereby submits its comments pertaining to the Commission's *Notice of Proposed Rule Making and Notice of Inquiry*, released July 1, 1994 (hereinafter "Notice").

In the *Notice*, the Commission requested comment on whether all CMRS providers should be subject to the regulatory obligations of equal access. PageNet believes that in the paging marketplace equal access is unnecessary because paging customers do not require access to an IXC's network. In addition, there are no dominant carriers exercising control of bottleneck facilities in the paging marketplace and the paging marketplace itself, through vigorous competition, already brings equal access type benefits to consumers.

The *Notice* also sought comment on whether the Commission should require Local Exchange Carriers ("LECs") to file tariffs in lieu of individually negotiated contracts with respect to CMRS interconnection. Since CMRS carriers have been individually negotiating interconnection for years, PageNet is concerned that important terms and provisions of already existing agreements will be lost if LECs are allowed to file tariffs relating to CMRS interconnection. In addition, PageNet is concerned that tariffs will allow LECs to unduly delay interconnection to CMRS providers and increase the CMRS interconnection rates. As such, PageNet believes that interconnection between LECs and CMRS providers should continue to be individually negotiated. However, on the issue of interconnection, PageNet does request that the Commission

take affirmative action regarding mutual compensation for traffic that originates in the LEC's network and terminates on the paging carrier's network. As of this date, although the Commission has clearly directed that mutual compensation be paid to CMRS carriers for terminating traffic, the LECs have yet to pay as such compensation.

The Commission also inquired whether it should require CMRS to CMRS interconnection and whether it should place resale requirements on CMRS providers. In the paging context, PageNet does not believe that carrier to carrier interconnection is required because paging customers already enjoy seamless paging service. With respect to resale, the paging marketplace dictates resale requirements and such requirements need not be imposed on the paging market by the Commission. In fact, resale is already a part of the distribution chain for paging services. However, PageNet believes the decision whether to allow resale on a carrier's system is and should remain a business decision.

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), through its attorneys and pursuant to 47 C.F.R. § 1.415, hereby submits its comments in the above-captioned proceeding.¹ PageNet's comments demonstrate that equal access, interconnection and resale should not be uniformly applied to all carriers in the Commercial Mobile Radio Services ("CMRS"). As the Commission concluded in the Notice, prior to the imposition of new regulatory obligations such as equal access, it must separately evaluate the characteristics of each service category within the CMRS classification based on the criteria it concludes appropriate.² Specifically, Part 22 paging, Private Carrier Paging ("PCP") and narrowband PCS systems are distinguished from cellular systems in that these paging services

¹ Notice of Proposed Rule Making and Notice of Inquiry, released July 1, 1994 (hereinafter "Notice").

² Notice at ¶30.

do not and will not offer real-time two-way duplex communications. Equal access simply is not a concept that applies to these services. In addition, for purposes of equal access and other anti-competitive measures, it must be emphasized that paging providers do not have control of a monopoly or bottleneck facilities and no paging carrier(s) exercise(s) dominance over the paging marketplace. As such, the application of equal access, interconnection and resale requirements to paging carriers will not achieve the same consumer and competitive benefits the Commission anticipates will result from imposition of those additional requirements on cellular carriers.³ In support of these Comments, the following is respectfully shown.

I. Statement Of Interest

PageNet is the largest and most rapidly expanding paging company in the United States. At present, PageNet provides both private and common carrier services to over 3.7 million units and, with the filing of both private and common carrier applications in excess of 50 per month, continues to expand its existing paging systems while establishing new paging systems in new markets. PageNet was also the successful bidder for three (3) nationwide narrowband PCS frequencies over which PageNet intends to offer VoiceNow™, its advanced paging service, which allows subscribers to receive voice messages in their pager, and to store these

³ Broadband PCS will provide a variety of real-time services, including real-time two-way voice services. In addition, it is anticipated that wide-area SMR or ESMR systems will be a direct competitor to cellular.

messages for convenient retrieval, or in other words, to have "voice mail on their belt." As such, with extensive experience in operating under the regulatory provisions of Part 90 and Part 22 of the Commission's Rules, PageNet is exceptionally qualified to evaluate and comment upon the proposals and inquiries in the Notice.

II. Equal Access Should Not Be Imposed On Paging Carriers

A. Equal Access Is Not Relevant In The Paging Marketplace Because Customers Do Not Require Access To An Interexchange Carrier's Network

The purpose of equal access was to provide users with a choice of Interexchange Carrier ("IXC"). As the Commission observed in the Notice, since the nature of paging is one-way, "application of equal access does not seem relevant because the paging customer does not have access to an IXC's network."⁴ Although paging services may be offered on a system whose backbone includes both local and toll components, these components are not divisible and cannot be separated out for equal access purposes. In addition, even where a paging system requires the use of toll facilities to effectuate the page, the paging customer does not have direct access to an IXC's network and is generally unaware that to complete the page the paging system utilizes a toll component. As such, it would be technically infeasible to impose equal access obligations on paging carriers.

PageNet wishes to emphasize that, like traditional one-way paging customers, advanced paging customers will also not have

⁴ Notice at ¶47.

access to an IXC's network. The difference between traditional paging systems and advanced paging systems is that the advanced paging system will include the capability for a customer to acknowledge that a page has been received and, in some instances, allow for the transmission of one of a number of preprogrammed responses. In effect, advanced paging will operate as two (2) one-way signals. One signal is initiated by the caller to the paging unit and a second signal is initiated from the paging unit by the customer. However, like its one-way counterpart, toll components of advanced paging services are not devisable, are a few seconds or milliseconds in duration, and do not place the customer in direct contact with an IXC's network.

B. Equal Access Obligations Are Appropriate Only For Dominant Carriers Controlling Bottleneck Facilities

As noted above, since paging customers do not require access to IXCs, equal access is not relevant to the paging marketplace. PageNet wishes to emphasize that, although a traditional equal access evaluation is not applicable to the paging marketplace because paging customers do not require access to an IXC's network, even under a traditional equal access evaluation, equal access obligations should not be imposed on paging carriers. Specifically, the central tenet of the Commission's evaluation of whether to impose equal access obligations at all must be whether carriers are dominant, and in

particular, control bottleneck facilities. The Commission defines a dominant carrier as a carrier that possesses market power.⁵ Market power refers to the control a carrier can exercise in setting the price of its output above competitive levels in order to achieve extranormal profits, or setting the price below competitive levels in an effort to eliminate competitors.⁶ By contrast, a carrier lacking in market power does not have the ability to price its services unreasonably, discriminate unreasonably or overbuild its facilities.⁷ In short, non-dominant carriers, like paging carriers, are subject to sufficient competitive pressure so that their performance is and can be presumed to be in the public interest.⁸

An analysis of the paging marketplace in the United States reveals that no carrier exercises market power and, as such, there are no dominant carriers in the paging marketplace.⁹ Specifically, since: (1) no paging carrier controls bottleneck facilities; (2) there are continual increases in the numbers and diversity of paging carriers and services; (3) there are minimal

⁵ *First Report and Order, In the matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, 6, 20 (1980) (hereinafter "Competitive Carrier").

⁶ *Id.* at 21.

⁷ *Id.* at 20-21.

⁸ *Id.* at 20.

⁹ *See Second Report and Order, In the Matter of Implementation of Section 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1467 (1994) (hereinafter "Second Report").

barriers to entry to the paging marketplace; (4) prices of pagers and paging services are declining; and (5) other technologies are reasonably substitutable with paging, in the paging marketplace, no one carrier exercises market power.¹⁰ In light of these facts, the Commission should not further consider imposing obligations born out of the need to correct anti-competitive practices in the local and interexchange markets on the paging market. PageNet strongly opposes any imposition of equal access obligations on paging carriers.

Equal access obligations are also unnecessary in the context of paging because the paging marketplace is highly competitive.¹¹ Specifically, as the Commission noted in the *Second Report*, on average, a paging carrier faces five other paging carriers competing with it in a given market. In some markets, the paging carrier faces as many as nineteen competitors.¹² In this regard, because of this intense competition, market forces in the paging marketplace have always worked to establish new and additional paging services for consumers. When paging consumers required wide-area, regional and nationwide paging service, such services were quickly implemented,

¹⁰ In determining whether an entity has market power and is thus dominant, the FCC found, *inter alia*, the following factors to be significant: (1) market share; (2) the number of barriers to entry; (3) the nature of barriers of entry; (4) the availability of reasonable substitutable services; (5) control of bottleneck facilities; and (6) the potential for future market entrants. *Competitive Carrier*, 85 FCC 2d at 21.

¹¹ *Second Report*, 9 FCC Rcd at 1468.

¹² *Id.*

not because of new regulatory obligations, but because of market pressure for such services.

Accordingly, because: (1) consumers in the paging marketplace already enjoy the perceived benefits of equal access obligations through competition; (2) the toll component of the page, if any, is indivisible from the other components of the page; (3) it is technically infeasible to impose equal access obligations on paging carriers; and (4) paging customers do not require access to an IXC's network, PageNet strongly supports the Commission's conclusion in the Notice that paging carriers should not be subject to equal access obligations.

C. The Cost-Benefit Analysis Demonstrates That Equal Access Is Not Applicable To Paging

In the Notice, the Commission tentatively concluded that cellular providers should be subject to equal access obligations.¹³ In part, the Commission's determination was based upon the fact that cellular carriers presently have only one competitor in their area of operation. The Commission determined that the benefits of imposing equal access requirements on cellular providers would be: (1) reduction in long distance rates for cellular subscribers; (2) increase in number of IXC networks available to cellular customers; (3) discounted long distance service offering; and (4) parity.¹⁴

It is important to note that none of the four (4) benefits attributable to the imposition of equal access on

¹³ Notice at ¶35.

¹⁴ Id. at ¶35-43.

cellular carriers are applicable to paging. Specifically, paging customers are not subject to long distance charges. In addition, paging customers have no need to reach IXC networks and no benefit would be derived from IXC service discounts. Furthermore, since paging services are significantly different from other CMRS services, the principle of parity, which requires that similar services be subject to similar regulatory treatment, should not operate to impose equal access obligations on paging carriers. In fact, parity has already been achieved in the paging marketplace because CMRS paging carriers, including Part 22 paging carriers, PCP carriers and BOC paging carriers, are all presently not subject to equal access obligations.¹⁵

III. CMRS Interconnection

A. Local Exchange Carrier To CMRS Interconnection Should Be Governed By Individually Negotiated Contracts

In the Notice, the Commission sought comment on whether the interconnection between Local Exchange Carrier ("LEC") and CMRS providers should be based upon individually negotiated contracts or whether the LEC providers should be required to file tariffs.¹⁶ PageNet opposes the use of tariffs in the LEC to CMRS

¹⁵ In *Memorandum and Order, United States v. Western Electric Co.*, No. 82-0192, (D.D.C. Feb. 16, 1989), the United States District Court for the District of Columbia, the very court that imposed equal access requirements on the Bell Operating Companies ("BOCs"), determined that the equal access obligations imposed upon the BOCs in the Modified Final Judgement ("MFJ") do not extend to the one-way paging operations of the BOCs and their paging affiliates. As such, unlike the BOC's cellular operations, which are subject to the MFJ, the BOC's paging systems operate without MFJ restrictions and obligations such as equal access.

¹⁶ Notice at ¶108.

interconnection context and believes LEC interconnection should continue to be individually negotiated. Specifically, since carriers have been individually negotiating with LECs for interconnection for years, tariffing could negate the benefits already achieved by the presently existing interconnection agreements and supersede the terms of such agreements. In this context, although PageNet believes that interconnection rates are still too high, tariffing of LEC interconnection will be a step backwards unless the Commission is willing and able to implement, a detailed, vigorous and timely enforcement program with respect to LEC interconnection tariffs. In the absence thereof, tariffing of interconnection will not benefit CMRS carriers because the LECs will be able to use tariffs, which are slow to change, as shields to hide behind, while interconnection service to CMRS providers is delayed and made more costly.

1. Mutual Compensation

Although PageNet believes that interconnection agreements should be governed by private contracts, PageNet is alarmed that the mutual compensation issue has yet to be completely resolved. Specifically, in the *Second Report*, the Commission stated:

In providing reasonable interconnection to CMRS providers, LECs shall be subject to the following requirements. First, the principle of mutual compensation shall apply, under which the LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities.

Second Report, 9 FCC Rcd at 1498 (emphasis added). However, as of this date, CMRS providers do not receive compensation from the LECs for terminating traffic.

The question with respect to the mutual compensation issue, is not whether LECs are required to provide mutual compensation for traffic originating on the LEC facilities and terminating on the CMRS carrier's facilities to CMRS providers. Rather, the question is how much mutual compensation should be paid, and when is that compensation to be paid. Despite the Commission's clear mandate in the *Second Report*, the LECs have refused to provide mutual compensation to CMRS carriers. This fact is particularly egregious in the context of paging because a majority of pages originate on the LEC's facilities and terminate on the paging carrier's facilities. Accordingly, PageNet requests that the Commission require the LECs to begin negotiating mutual compensation with CMRS carriers within 60 days of the Order issued as a result of this proceeding.

B. CMRS to CMRS Interconnection

In the *Notice*, the Commission inquired whether it should impose CMRS to CMRS interconnection obligations.¹⁷ As the Commission recognized in the *Notice*, PageNet believes that the evaluation of whether to impose new regulations on carriers in a particular service should be conducted in light of that service's particular characteristics. In the context of intraservice interconnection, such as the interconnection requirement in

¹⁷ *Id.* at ¶121.

cellular, interconnection policy stems from the desire for seamless service. In the paging context, seamless service already exists. Paging subscribers already enjoy local, wide-area, statewide, regional and nationwide paging services and can choose which services best suit their needs. These paging services were the result of market forces acting upon a competitive marketplace. As the need for such services arose, the marketplace responded to meet the service needs of consumers. Therefore, in the context of paging services, carrier to carrier interconnection is not required.

PageNet also believes interconnection obligations are only applicable where an industry is dominated by one or two providers that control bottleneck facilities. Since the paging market is highly competitive without bottleneck facilities, PageNet opposes the imposition of interconnection requirements on paging providers. PageNet submits that the only purpose that the imposition of interconnection requirements would serve on the paging marketplace, would be to allow competitors to avoid the costs associated with building-out their own networks. As such, consumers will not benefit from the imposition of paging carrier to paging carrier interconnection requirements because the results of such requirements will be the construction of fewer paging facilities, smaller varieties of service offerings, and increased costs for paging services.

IV. Resale Requirements For CMRS Providers

In the *Notice*, the Commission inquired whether it should impose resale obligations on CMRS providers.¹⁸ Like CMRS to CMRS interconnection, PageNet believes that such obligations are unnecessary in the context of paging. In both the long distance and cellular markets, resale has been a tool the Commission used to assist carriers in entering the market, and to eliminate discriminatory pricing. Resale also allows for seamless service offerings such as the offerings of long distance carriers.

In the paging context, which there are no barriers to entry, and which paging systems offer local to nationwide service, there is no public interest need or objective that would necessitate the imposition of resale obligations on paging carriers. (In fact, permissible resale is already a part of the vast distribution chain for paging services, but the decision to allow resale is presently and should remain a business decision based upon the paging marketplace environment, not a regulatory requirement.) It should be emphasized that the Commission has previously determined that facilities-based cellular carriers need not provide its facilities-based competitor with resale after the expiration of the competitor's five (5) year build-out period.¹⁹ The Commission found that termination of resale would promote interbrand competition, expedite expansion of service areas, spur

¹⁸ *Id.* at ¶123.

¹⁹ 47 C.F.R. § 22.914.

deployment of spectrum efficient technology and that the public interest is best served when facilities-based carriers are competing against each other to the fullest extent possible.²⁰ Therefore, in light of the foregoing, there is simply no reason to apply resale obligations to paging.

V. Conclusion

In the *Notice*, the Commission inquired whether all CMRS providers should be subject to the significant regulatory obligations of equal access, interconnection pursuant to tariff, CMRS to CMRS interconnection, and CMRS resale. PageNet believes that in a competitive marketplace such as paging, market forces dictate lawful rates and encourage varied service offerings. In addition, PageNet believes that increasing regulatory requirements and obligations in a competitive marketplace would inhibit market entry and lower rates to customers. In fact, the Commission has previously determined that non-dominant carriers are not likely to behave in an anti-competitive manner because these carriers recognize that the result of such behavior will be the loss of customers.²¹ Therefore, since paging carriers, the paging marketplace and paging subscribers will not benefit from the significant regulatory requirements proposed and discussed in the

²⁰ *Cellular Resale Policies*, 7 FCC Rcd 4006, 4007-4008 (1992).

²¹ *Notice of Inquiry and Proposed Rulemaking, In the Matter of Policy and Rules Concerning rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 77 FCC 2d 308, 334-338 (1979); *Competitive Carrier*, 85 FCC 2d at 31.

Notice, these regulatory obligations and requirements will not serve any legitimate public interest or statutory purpose and should not be imposed upon paging carriers.

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CERTIFICATE OF SERVICE

I, Deborah S. Cohill, a secretary with the firm of Reed Smith Shaw & McClay, hereby certify that I have caused to be sent by first class United States mail, postage prepaid, a copy of these "Comments" to all parties listed on the attached service list.

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